Attorney Docket No. **REV-1-DIV**

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant:	David H. Hadzicki et al	)
Serial No.:	10/770,094	) Group: 3618
Filed:	January 30, 2004	) Examiner: PHAN, HAU VAN
For:	COMPOSITE SPORT BOARD	)

APPELLANT'S APPEAL BRIEF

MAIL STOP: APPEAL BRIEF-PATENTS
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Real Party In Interest

The real party in interest herein is Revolution Enterprises Incorporated, a California corporation having principal offices in Poway, California and employer and assignee of the inventors hereof.

Related Appeals and Interferences

None.

Status Of Claims

The pending claims, namely, claims 1 - 7 all stand rejected under an Office Action dated June 29, 2005. Appellant has appealed from the rejection of all of the claims 1 - 7.

Summary Of The Invention

A sports board 10 such as skate board, wake board, snow board, surf board and the like, is formed of top 36 and bottom 32 resin impregnated composite fiber layer surfaces 21, 22, 24 and 26, each layer being in selected different orientation. The top and bottom surfaces are spaced from each other to form an interior region 20. This region has elongated fiber composite tubular members 14, 44 for stiffening and low density filler material 36 filling the remainder of the interior region. At certain discrete locations, the top and bottom surfaces are pinched together and adhered to form pockets 18, 38 which resist shearing movement between the top and bottom surfaces. Such pockets may be covered by at least one composite fiber layer 50. This structure provides a very high strength, durable and yet lightweight skate board, or other sports board.

Issues

The claims all stand rejected under 35 U.S.C. 103(a) as being allegedly obvious over Gordon et al (5,924,718) in view of Morrow (5,769,445). Therefore, the issue on appeal is whether the claims on appeal are obvious in view of this combination of prior art references.

Grouping Of Claims

Claims 1 - 7 shall stand or fall together.

Argument

Gordon et al disclose a thermoplastic snow board made of injection molded plastic surfaces that are glued together. The top plastic surface is essentially planar in shape. The bottom plastic surface has a plurality of ribs 24 which extend toward the top surface and which provide the gluing surfaces for interconnecting top and bottom. Contrary to the statement alleged in the last Office Action, each such surface is injection molded plastic and not formed of cured, resin impregnated composite fiber layers having a selected orientation. Moreover, there is no pinching of surfaces to form pockets. Instead,

Gordon et al disclose elongated ribs extending along substantially the entire length of the board. These ribs are then glued or spot welded to the upper planar surface. They are not pockets as disclosed and claimed by Appellant. Instead they form longitudinal flanges which merely provide a way of securing the inner lower surface to the inner upper surface. Clearly, Gordon et al do not disclose or suggest what Appellant discloses and claims.

Morrow is cited to remedy the failure of Gordon et al to disclose elongated tubular members. However, Morrow also does not disclose pinched pockets and therefore does not remedy this deficiency in Gordon et al. Moreover, because Gordon et al is an injection molded plastic structure and Morrow is a composite tubular structure, it would not be obvious to modify Gordon et al by the teaching of Morrow. On the contrary, Morrow's tubes and filler material would serve no purpose in Gordon et al. Finally, there is no teaching in either reference to provide pockets covered by a layer of fiber composite material as claimed by Appellant.

Based upon the foregoing, the rejection of claims 1 - 7 based on obviousness, should be reversed because:

Clearly, the alleged combination of Gordon et al and Morrow is nothing more than a failed attempt at improper hindsight-based reconstruction of Appellant's claimed structure. There is clearly no other motivation to combine these two prior art references.

"Obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination."
ACS Hosp. Sys., Inc. V. Montefiore Hosp.
221 U.S.P.Q. 929, 932 (Fed. Cir. 1984)
See also Group One Ltd v. Hallmark Cards, Inc.
74 U.S.P.Q.2d 1759, 1765 (Fed. Cir. 2005)

"Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention."
ATD Corporation v. Lydall, Inc.
48 U.S.P.Q. 2d 1321, 1329 (Fed. Cir. 1998)

"This court forbids the use of hindsight in the selection of references that comprise the case of obviousness."
In re Rouffet
47 U.S.P.Q. 2d 1453, 1458 (Fed. Cir. 1998)

Appellant's claims 1-7 are not obvious over the cited prior art and therefore are patentable thereover.

Respectfully submitted,

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Dated: 7/11/06

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APPENDIX

1. A skate board deck comprising:

a pair of substantially parallel surfaces spaced from each other to form an interior region, each such surface being formed of a plurality of cured, resin impregnated, composite fiber layers, each such layer having a selected orientation;

at least one tubular member positioned between said surfaces in said interior region for stiffening said deck; and a low density filler material substantially filling the remainder of said interior region;

wherein said parallel surfaces are pinched together at at least one location along said deck to resist shearing movement between said surfaces.

2. The skate board deck recited in Claim 1 wherein a pocket is formed in at least one of said surfaces at said pinching location.

3. The skate board deck recited in Claim 2 wherein said pocket is filled with a low density filler material.

4. The skate board deck recited in Claim 3 wherein said filler material in said pocket is covered by at least one layer of composite fiber material.

5. A sports board comprising:

fiber reinforced plastic material surfaces forming an interior region, said region being substantially filled with a low density core material;

at least one centrally located tubular spine positioned within said interior region;

wherein said at least one spine is made of a material that is the same material used in said surfaces;

at least one elongated tubular edge member located within said interior region along the edges of said surfaces;

wherein said at least one edge member is made of the same material as said surfaces;

wherein said surfaces are pinched together at at least one location on said board to form a shearing movement-resistant pocket.

6. The sports board recited in Claim 5 wherein said pocket is filled with a low density material and covered by a layer of fiber.

7. A method of fabricating an elongated sport board to achieve desired weight and stiffness, the method comprising the steps of:

forming said board with upper and lower major surfaces and a substantially continuous edge surface, said major surfaces and edge surface providing an interior, said major and edge surfaces being made of a curable, resin-based fiber material;

adding a curable foam to said interior;

creating tubular stiffening members of selected lengths; and

placing said tubular stiffening members in said interior;

the step of providing pockets at selected locations along said major surfaces, said pockets being formed by pinching said upper and lower major surfaces together and adhering them to one another within said interior.